IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR

THURSDAY, THE 5TH JULY 2007 / 14TH ASHADHA 1929

RSA.No. 114 of 2007()

(AGAINST THE JUDGMENT DATED 30/06/2006 IN AS.82/1997 OF THE DISTRICT COURT, THODUPUZHA REVERSING THE JUDGMENT AND DECREE DATED 30/3/96 IN OS.221/1993 BEFORE THE SUB COURT,KATTAPPANA)

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APPELLANTS/RESPONDENTS/PLAINTIFFS:

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1. **P.J.AVIRAH, S/O.JOSEPH, AGED 45 YEARS, RESIDING AT PALPAPILLIL HOUSE, KARIMKUNNAM VILLAGE THODUPUZHA TALUK, IDUKKI DISTRICT.**

2. **T.P.DEVASIA, S/O.POULOSE, AGED 49 YEARS, RESIDING AT THAMBAKAYIL HOUSE, OLAMATTOM, THODUPUZHA, THODUPUZHA TALUK.**

3. **IDUKKI DISTRICT CONGRESS COMMITTEE OF THE INDIAN NATIONAL CONGRESS(I) JAWAHAR BHAVAN, IDUKKI, REPRESENTED BY E.M.AUGUSTHY, PRESIDENT, IDUKKI DISTRICT CONGRESS COMMITTEE(I).**

BY ADV. SRI.JOICE GEORGE
SRI.LIJI.J.VADAKEDOM

RESPONDENTS: APPELLANTS 2 TO 4 & R4 TO 9, LEGAL HEIRS OF DEFENDANT/DEFENDANTS 2, 3 AND 5 TO 8:

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1. **VIJAYAMMA, W/O.LATE DHANANJAYAN, AGED 58 YEARS, RESIDING AST VIJAYA BHAVAN, MADAMMAM KARA, MADAMMAM KARA, PERINADU VILLAGE, RANNI TALUK.**

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2. DHANYA, D/O.LATE DHANAJYAYAN,
AGED 31 YEARS, RESIDING AT VIJAYA BHAVAN,
MADAMMAM KARA, PERINADU VILLAGE, RANNI TALUK.

3. DIVYA, D/O.LATE DHANJAYAN, AGED 29,
RESIDING AT VIJAYA BHAVAN, MADAKKAM KARA,
PERINADU VILLAGE, RANNI TALUK.

4. JOSE KUTTIANI, AGED BOUT 62 YEARS,
RESIDING AT KUTTIANI HOUSE, THODUPUZHA VILLAGE,
THODUPUZHA TALUK, IDUKKI DISTRICT.

5. K.J.JOHN,AGED ABOUT 77 YEARS,
RESIDING AT KOCHUPARAMBIL HOUSE,
MUTHALAKODAM P.O., THODUPUZHA VILLAGE,
THODUPUZHA TALUK.

6. C.N.SOMARAJAN, D.C.C.GENERAL SECRETARY,
JAWAHAR BHAVAN, IDUKKI DISTRICT.

7. MATHEW, S/O.PAILY, CHANTHANIYIL
THEKKUMBHAGOM KARA, KARIKKODE VILLAGE,
THODUPUZHA TALUK.

8. CHERIYAN, S/O.AUGUSTINE,
THENMACKAL, OLAMATTOM KARA,
THODUPUZHA VILLAGE, THODUPUZHA TALUK.

9. FRANCIS, S/O.ULAHANNA,
VETTUKATTIL KOTHALKUNNU KARA,
THODUPUZHA VILLAGE, THODUPUZHA TALUK.

BY

THIS REGULAR SECOND APPEAL HAVING COME UP FOR ADMISSION ON 05/07/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

M.SASIDHARAN NAMBIAR, J.

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R.S.A.No. 114 OF 2007

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DATED THIS THE 5th DAY OF JULY, 2007

JUDGMENT

Plaintiffs in O.S.221 of 1993 on the file of Sub Court, Kattappana are appellants. Defendants are respondents. Appellants instituted the suit seeking a decree for declaration that the decree and judgment obtained in O.S.35 of 1978 is fraudulent and collusive and not binding on the plaintiffs and for a permanent prohibitory injunction restraining respondent from realising the decree debt due under the said decree. The case of appellant was that Idukki District Congress Committee office is one among the assets of Indian National Congress party and it is a three storeyed concrete building constructed by the party and on 18.1.1999 a proclamation of sale was issued by the court for realisation of decree debt in O.S.35 of 1978 on the file of Sub Court, Kottayam in E.P. 236 of 1988 and on enquiry it was found that the decree was fraudulently obtained by first respondent against respondents 2 and 3 and during the trial respondents 2 and 3 filed a consent statement and the decree was obtained and it is alleged that the decree is collusive and void and as it was passed without AICC in the party array appellant is entitled to

get the declaration and injunction. First respondent filed a written statement contending that the suit is barred by limitation and O.S.35 of 1978 was instituted in 1978 and at the time of filing the suit, sufficient notice was given to appellants and general public and there was publication of notice under Order I Rule 8 of Code of Civil Procedure and nobody appeared or contested the suit except respondents 2 and 3 and when the liability was admitted, the suit was decreed and it is not vitiated by fraud and collusion and appellant is not entitled to the decree sought for.

2. Learned Sub Judge framed the necessary issues. On the evidence of PW1 and DW1 and Exts.A1 to A6, learned Sub Judge held that the decree in O.S.35 of 1978 on the file of Sub Court, Kottayam was fraudulent or collusive and the decree and judgment is not binding on the DCC Idukki or Indian National Congress and granted a decree that the decree in O.S.35 of 1978 is not valid and binding on appellant or the DCC or Indian National Congress

3. Plaintiffs challenged the decree and judgment before District Court, Thodupuzha in A.S.82 of 1997. Learned Additional District Judge, on reappreciation of evidence, set

aside the findings of learned Sub Judge and allowed the appeal and dismissed the suit. It is challenged in the second appeal.

4. Learned counsel appearing for the appellant was heard. The argument of the learned counsel was that O.S.35 of 1978 was filed by first respondent against respondents 2 and 3 and it was a suit under Order I Rule 8 and as evidenced by Ext.A2, statement filed by respondents 2 and 3 and Ext.A4, the judgment, decree was granted only on admission of defendants and therefore it is a decree as provided under Rule 3B of Order XXIII of Civil Procedure Code and as the conditions provided under Rule 3B of Order XXIII was not complied with, even though the suit was filed under Order I Rule 8, first appellate court should have found that the decree in O.S.35 of 1978 is collusive and void and not valid and binding on appellant or the AICC or the DCC. It was also argued that when all assets of the Congress party belongs to AICC without impleading AICC, decree should not have been granted and for that reason also courts below should have found that the decree in O.S.35 of 1978 is not valid and binding on AICC.

5. On hearing learned counsel appearing for appellant, I do not find any substantial question of law involved in the appeal.

O.S.35 of 1978 was filed for realisation of the amount due to first respondent for being the cost of construction of the building for the DCC. That suit was filed against the Idukki DCC represented by the then DCC President and Secretary. Suit was filed under Rule 8 of Order I of Code of Civil Procedure. There is no case that sufficient publication was not effected. Defendants appeared and thereafter filed a written statement. In the written statement, they admitted the liability. The liability which was admitted was the liability to pay the cost of construction, of the building for the DCC. As the plaint allegations are admitted, suit was decreed by the trial court. It cannot be said that that is a decree as provided under Rule 3B of Order III as canvassed by learned counsel appearing for appellant. It was a decree granted by the court on the basis of written statement filed by defendants whether they admitted the plaint claim. Even though publication was effected, none of the members of the Congress party including appellants intervened in that suit and got themselves impleaded and resisted the suit. In such circumstances it cannot be said that O.S.35 of 1978 was filed fraudulently or that the decree is vitiated by fraud or collusion as canvassed by appellant. First appellate court considered the

evidence in the proper perspective and granted a decree. No substantial question of law is involved in the appeal.

Appeal is dismissed in limine.

M.SASIDHARAN NAMBIAR, JUDGE

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